



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TN 37243-1131

September 22, 2009

United Of Omaha Life Ins Company  
Mutual Of Omaha Plaza  
Omaha, NE 68175  
NAIC # 69868

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7008 3230 0002 4322 7975  
Cashier # 5048

Re: Linda Manning V. United Of Omaha Life Ins Company

Docket # 09C1153

To Whom It May Concern:

We are enclosing herewith a document that has been served on this department on your behalf in connection with the above-styled matter.

I hereby make oath that the attached Breach Of Contract Complaint was served on me on September 14, 2009 by Linda Manning pursuant to Tenn. Code Ann. § 56-2-504 or § 56-2-506. A copy of this document is being sent to the Circuit Court of Hamilton County, TN.

Brenda C. Meade  
Designated Agent  
Service of Process

Enclosures

cc: Circuit Court Clerk  
Hamilton County  
625 Georgia Avenue, Rm 500  
Chattanooga, Tn 37402



Service of Process 615.532.5260

STATE OF TENNESSEE	COURT (Must be completed) Circuit 09 SEP -8 AM 11:38	COUNTY (Must be completed) Hamilton
SUMMONS		FILED IN OFFICE PAULA T. THOMPSON, CLERK BY <u>JW</u> file no. <u>09C1153</u> (Must be completed) Division _____ (Large counties only)
Plaintiff (Name: First, Middle, Last) Linda Manning	Defendant (Name: First, Middle, Last) United of Omaha Life Insurance Company	

TO: The Defendant Named Above

☐ [Alternative 1: residence address]

☐ [Alternative 2: employer's name and address]

☐ [Alternative 3: other suitable address]

United of Omaha Life Insurance Company by and through Commiss:  
of the Tennessee Department of Commerce and Insurance  
500 James Robertson Parkway Suite 660  
Nashville, TN 37243-1121

You are hereby commanded to answer and make defense to a Complaint which has been filed in this case. Your defense to this Complaint must be filed in the office of the clerk of this court on or before 30 days after service of this Summons upon you. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

WITNESSED and issued this 8<sup>th</sup> day of September  
20 09

Paula T. Thompson, Clerk

Name and Title of Clerk

By G. Wheeler, D.C.  
Deputy Clerk

Received this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

/s/

Deputy Sheriff

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

I certify that the foregoing is a true and correct copy of the original Summons issued in this case.

\_\_\_\_\_  
Name and Title of Clerk  
By \_\_\_\_\_  
Deputy Clerk

**OFFICER'S RETURN**

I certify that I have served this Summons together with the Complaint as follows:

On \_\_\_\_\_, 20\_\_\_\_, I delivered a copy of the Summons and Complaint to the Defendant.

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE  
AT CHATTANOOGA

LINDA MANNING,

Plaintiff,

v.

UNITED OF OMAHA LIFE  
INSURANCE COMPANY,

Defendant.

JURY DEMAND

NO.: 09C1153

09 SEP -8 AM 11:36  
FILED IN OFFICE  
PAULA T. THOMPSON, CLERK  
BY: *[Signature]* DC.

**COMPLAINT**

COMES the Plaintiff, Linda Manning (hereinafter "Plaintiff"), by and through the undersigned counsel of record, and hereby brings the following Complaint against Defendant United of Omaha Life Insurance Company (hereinafter "United of Omaha"), stating as follows:

**PARTIES**

1. At all relevant times Plaintiff was and is an adult resident of Hamilton County, Tennessee.
2. Plaintiff alleges upon information and belief that Defendant United of Omaha is an insurance company authorized to transact the business of insurance in this state.
3. Defendant United of Omaha is the underwriter of and/or insurer of a disability insurance policy issued to Plaintiff, said policy having, inter alia, the following identifying characteristic: Policy No. GLTD 754H (hereinafter "Policy").
4. Defendant United of Omaha may be served with process by serving the

Commissioner of the Tennessee Department of Commerce and Insurance, 500  
James Robertson Parkway, Suite 660, Nashville, Tennessee 37243-1121.

**JURISDICTION AND VENUE**

5. This is an action for damages for failure to pay benefits under an insurance policy and other related claims over which this court has jurisdiction.
6. Venue is proper in Hamilton County, Tennessee.

**FACTS**

7. At all relevant times Plaintiff was employed by the City of Chattanooga, a State of Tennessee municipality, as an executive assistant.
8. While Plaintiff was employed by the City of Chattanooga, said entity purchased a disability insurance Policy from Defendant United of Omaha.
9. Plaintiff applied for coverage, was accepted, and was thereafter covered under said Policy.
10. Plaintiff's employment at the time the Policy was issued and at the time she became disabled was an executive assistant.
11. All premiums have been paid and Plaintiff has satisfied all the requirements for coverage under the above Policy, which is a contract for insurance.
12. Plaintiff, while covered under the Policy, incurred a disability on or about February 7, 2008, or thereafter, which caused then and/or subsequently, inter alia, pain, fatigue, physical restrictions and/or limitations, and problems with concentration or memory, all of which interfered with her ability to work, and ultimately caused her to become totally disabled.
13. On or about February 7, 2008, and thereafter, Plaintiff's medical condition caused

her to have a complete inability to perform the material and substantial duties of her regular occupation, as well as an inability to perform the material and substantial duties of any gainful occupation.

14. Subsequent to her disability, Plaintiff applied for benefits under the Policy by submitting an insured's statement and, thereafter, by submitting, inter alia, numerous attending physician statements and medical records pursuant to the requirements of the Policy.
15. On January 22, 2009, after paying the Plaintiff some disability benefits through October 5, 2008, Defendant United of Omaha sent Plaintiff a letter explaining that it had denied coverage on her claim.
16. Plaintiff, thereafter and by and through counsel, appealed the denial of her claim.
17. On May 29, 2009, Plaintiff sent United of Omaha a letter indicated that if benefits were not paid pursuant to the policy within 60 days then Plaintiff would seek penalties under Tennessee Bad Faith Statute, Tenn. Code Ann. § 56-7-105 and/or under any other relevant bad faith or similar state statute.
18. On July 16, 2009, Defendant United of Omaha sent Plaintiff's counsel a letter explaining that Plaintiff's claim was still under appellate review though no decision on the claim had been reached.
19. While Plaintiff has received some benefits under the Policy, she has not received the full requisite of benefits due under the Policy.

#### **COUNT ONE**

#### **TENNESSEE BREACH OF CONTRACT**

Plaintiff incorporates the allegations contained in paragraphs 1 through 19 as if

fully stated herein and further states that:

20. Under the laws of the State of Tennessee, Plaintiff was covered under the Policy and said Policy constitutes a contract for insurance coverage.
21. Under the laws of the State of Tennessee, Plaintiff made a valid and timely claim for benefits under terms of the Policy and Defendant has refused to pay.
22. Under the laws of the State of Tennessee, all premiums have been paid and Plaintiff has met all other conditions precedent to have a valid contract for insurance coverage and has satisfied the terms of the contract entitling her to benefits under the contract.
23. Under the laws of the State of Tennessee, Defendant has breached, and continues to breach, its contractual duties under the insurance Policy by failing and refusing to pay the full requisite of benefits owed the Plaintiff and by failing to perform its duties as set out in the contract.
24. Under the laws of the State of Tennessee, as a direct and proximate result of Defendant's breach, Plaintiff has suffered, and continues to suffer, substantial damages as previously set forth above.

## **COUNT TWO**

### **VIOLATION OF THE TENNESSEE CONSUMER PROTECTION ACT**

#### **TENNESSEE CODE ANNOTATED § 47-18-101 AND § 47-18-109.**

Plaintiff incorporates the allegations contained in paragraphs 1 through 24 as if fully stated herein and says further that:

25. Tennessee Code Annotated § 47-18-109 provides a private right of action to any person who suffers an ascertainable loss of money or property as a result of the

use or employment by another person of an unfair or deceptive act or practice declared unlawful by the Consumer Protection Act.

26. The acts which are prohibited under the Consumer Protection Act are listed in Tennessee Code Annotated § 47-18-104. In addition to the specifically prohibited acts, Tennessee Code Annotated § 47-18-104(b)(27) is a catch-all provision prohibiting all practices which are deceptive or unfair to customers.
27. By ignoring the terms of the disability insurance contract and by giving the Plaintiff inadequate or misleading information about her claim, the Defendant has acted unfairly and deceptively.
28. As a direct and proximate result of the Defendant's conduct, Plaintiff has suffered and continues to suffer monetary loss and damages.
29. Through its handling of the Plaintiff's claim, the Defendant has willfully and knowingly violated the Tennessee Consumer Protection Act, Tennessee Code Annotated § 47-18-101 et seq., entitling Plaintiff to treble damages.

### **COUNT III**

#### **TENNESSEE BAD FAITH FAILURE TO PAY CLAIM**

Plaintiff incorporates the allegations contained in paragraphs 1-29 as if fully stated herein and further states that:

30. At all times relevant to the matters alleged herein, Defendant was under a duty to use good faith in the handling of Plaintiff's claim.
31. Plaintiff's claim for benefits is due and payable and Plaintiff's application was filed subsequent to her disability and which constitutes a formal demand for payment, and Defendant has either failed or refused to pay further benefits.



32. Defendant impeded a legitimate and well-supported claim for benefits, which clearly shows an intent not to honor the terms of the Policy.
33. Defendant acted in bad faith in denying benefits to Plaintiff or in failing to timely make a decision on Plaintiff's claim.
34. As a direct and proximate result of Defendant's actions in handling this claim, Plaintiff has suffered, and continues to suffer, monetary loss and damages, including the need to hire an attorney to enforce the terms of a contract for insurance.
35. Because Defendant did not act in good faith in denying Plaintiff's claim for benefits, Defendant is liable under Tennessee Code Annotated § 56-7-105(a) for additional damages in an amount up to 25% of liability.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests that this Court grant her the following relief in this case:

That the Court enter judgment in favor of Plaintiff and against Defendant and that the Court order Defendant to perform its obligations under the contract for insurance and to pay past due benefits to Plaintiff in an amount equal to the contractual amount of benefits to which she is entitled.

That the Court order Defendant to pay Plaintiff prejudgment interest in all benefits that have accrued prior to the date of judgment;

That the Court order Defendant to pay Plaintiff prejudgment interest on all benefits that have accrued prior to the date of judgment;

That the Court order Defendant to continue paying benefits to Plaintiff until such

time as she no longer qualifies for continuation of benefits.

That the Court order Defendant to pay treble damages pursuant to Tennessee Consumer Protection Act, Tennessee Code Annotated § 47-18-101 et seq.;

That the Court order Defendant to pay an additional 25% of the contractual liability for bad faith handling of the claim, pursuant to Tennessee Code Annotated § 56-7-105(a);

That the Court order Defendants to pay Plaintiff's attorneys' fees and costs under applicable law, and,

That Plaintiff recover any and all other relief to which she may be entitled.  
Plaintiff further demands a jury to hear her case.

Dated this 8th day of September, 2009.

Respectfully submitted,

ERIC BUCHANAN & ASSOCIATES, PLLC  
ATTORNEYS FOR PLAINTIFF

BY: 

Eric L. Buchanan (#018768)

R. Scott Wilson (#019661)

D. Seth Holliday (#023136)

414 McCallie Avenue

Chattanooga, Tennessee 37402

(423) 634-2506

(423) 634-2505 (fax)



7008 3230 0002 4322 7975

7008 3230 0002 4322 7975 9/22/08  
UNITED OF OMAHA LIFE INS COMPANY  
MUTUAL OF OMAHA PLAZA  
OMAHA, NE 68175